

Gentlemen:

You have requested my opinion as to the authority of your board to call a conference with reference to wholesale prices within the State of Montana, under the Unfair Practices Act, and to expend funds of the commission in defraying the expenses of such conference. You have advised me as follows:

"This application, although informal, was made under the provisions of Rule XXVII of the established rules of the Montana Trade Commission. This rule provides that the Commission may call such a conference after reasonable public notice of the time and place, and that a transcript of the conference proceedings shall be made and filed in the office of the Commission.

"This procedure, set up by Rule XXVII will require the expenditure of public funds for the compilation of the transcript and the public notices. . . ."

Rule XXVII promulgated by your commission insofar as pertinent here, provides:

"(s) Purpose. The Unfair Practices Act Conference procedure has for its purpose the establishment, by the Commission, of rules in the interest of more efficiently administering the Unfair Practices Act. This procedure affords opportunity for voluntary participation by interested parties in the formulation of rules to provide for adjusting trade practices in conformity to the Unfair Practices Act. These rules may also contain provisions to foster and promote fair competitive conditions and to establish standards of ethical business practices in harmony with public policy under the provisions of the Unfair Practices Act of Montana."

Section 14 of Chapter 80, Laws of 1937, known as the "Unfair Practices Act," provides:

"The legislature declares that the purpose of this act is' to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair and discriminatory practices by which fair and

Opinion No. 102

Board of Food Distributors, Authority of—Montana Trade Commission—Conference, Authority to Call—Funds, Authority for Expenditure—Unfair Practices Act.

Held: If, in the judgment of the State Board of Food Distributors, Ex Officio Montana Trade Commission, a conference will aid the Commission in carrying out the purposes of the Act, it is within the implied powers of the Commission to provide by rule for the calling and holding of such a conference. Expenses necessary for such a conference would come within the term "operation" as used in the appropriation bill and therefore may be paid from the appropriation made to the Commission.

February 9, 1948

State Board of Food Distributors
Ex Officio Montana Trade
Commission
Helena, Montana

honest competition is destroyed or prevented. **This Act shall be literally construed that its beneficial purposes may be subserved.**" (Emphasis supplied).

Giving to the Act a literal construction as provided in Section 14, it is clear the legislature intended that the commission have broad powers and discretion in the administration of the Act to the end that the purpose thereof be fulfilled. Thus it follows that any action deemed necessary or advisable by the commission to obtain the ends intended by the legislature in the administration of the Act, as expressed in Section 14, *supra*, is within its power and authority, express or implied.

The Supreme Court of Montana in the case of *Guillot v. State Highway Com, et al*, 102 Mont. 149, 153, 154, 56 Pac. (2d) 1062, in speaking of the implied powers of a board or commission, said:

"But the powers which an officer, commission or department may exercise are not confined to those expressly granted by the Constitution or statutes of the state."

And quoting from 46 *Corpus Juris*, 1032, with approval, the Court continued:

"In addition to powers expressly conferred upon him by law, an officer has by implication such powers as are necessary for the due and efficient exercise of those expressly granted, or such as may be fairly implied therefrom. But no power will be implied other than those which are necessary for the effective exercise and discharge of the powers and duties expressly conferred."

And further, in the *Guillot* case, *supra*, the Court said:

"Where the legislature sees fit to confer upon a board or commission such broad general powers, the repository of the power is vested with discretion in choosing the means and methods of accomplishing the result expected, and, in the absence of fraud or manifest abuse of that discretion, its determination is conclusive."

The legislature has made an appropriation to the commission "for salaries and expenses." The term "salaries and expenses" is defined in the appropriation bill to include "operation," which in turn is defined as "all other expenditures which are necessary for the operation of the department, board, bureau, commission or institution to which the appropriation applies, including wages of employees paid to temporary employees for work not considered of a continuous nature." See House Bill No. 437, Laws of 1947, page 749.

It is my opinion that the provisions of Section 12B, which was added by the amendment to Chapter 80, Laws of 1937, by Section 3 of Chapter 50, Laws of 1939, under which the Commission is given certain specific authority in conducting hearings and investigations "which, in the opinion of the Commission, are necessary and proper for the exercise of the powers vested in it. . . ." clearly show the legislature contemplated hearings and investigations by the Commission, other than those specifically provided with regard to the retail trade. This, but strengthens my answer to your question.

It is, therefore, my opinion that if in the judgment of your Commission a conference such as is proposed would aid the Commission in carrying out the purposes of the Act, it is within the implied powers of the Commission to provide by rule for the calling and holding of such a conference. Expenses necessary for such a conference would come within the term "operation" as used in the appropriation bill and therefore may be paid from the appropriation made to the Commission.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General